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Attorney for Plaintiff
ASUSTEK Computer, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ASUSTEK COMPUTER, INC.,

Case No. 08-CV-602-JM (WMc)

Plaintiff,

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

INTERNATIONAL BUSINESS MACHINES CORPORATION.

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff ASUSTeK Computer, Inc. (hereinafter Plaintiff or "ASUS") hereby files this complaint against Defendant International Business Machines Corporation (hereinafter "IBM"), and alleges as follows:

PARTIES

1. Plaintiff ASUSTeK Computer, Inc. is a Taiwanese corporation with its principal place of business located at 4F No. 150 Li-Te Road, Peitou, Taipei 112, Taiwan, Republic of China (R.O.C.).

2. On information and belief, Defendant IBM is a New York corporation with its principal place of business located at New Orchard Road, Armonk, New York 10504.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the cause of this action pleaded herein under 28 U.S.C. §§ 1331 and 1338(a) because the action concerns a federal question arising under the patent laws of the United States, including 35 U.S.C. § 271.

4. Venue is proper in this judicial district under 28 U.S.C. §§1391(b), (c) and 1400(b) because, among other reasons, IBM is subject to personal jurisdiction in this judicial district, has committed acts of infringement in this judicial district, and has a regular and established place of business in this judicial district.

5. Upon information and belief, IBM has placed infringing products into the stream of commerce by shipping those products into this judicial district or knowing that such products would be shipped into this judicial district.

FIRST CLAIM FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 6,041,346

6. The allegations of paragraphs 1-5 are incorporated herein by reference.

7. ASUS is the owner by assignment of all right, title, and interest in and to the United Patent No. 6,041,346, entitled "Method and system for providing remote storage for an appliance" (hereinafter "the '346 patent"), which was duly and legally issued on March 00. A true and correct copy of the '346 patent is attached to this Complaint as Exhibit 1.

8. IBM has infringed and continues to infringe directly and/or indirectly, literally under the doctrine of equivalents, one or more claims of the '346 patent under 35 U.S.C. § 271, by making, using, offering to sell, or selling within the United States, including this judicial district, or importing into the United States, storage area network hardware and software products, including but not limited to IBM TotalStorage SAN256B, IBM System Storage N7000 Series Disk Storage System, and Tivoli Storage Area Network Manager.

9. IBM's unlawful infringement of the '346 patent, ASUS has suffered, and will
continue to suffer, irreparable harm and damages.

10. IBM's past and continued acts of infringement have injured and damaged ASUS, and will continue to cause irreparable injury to ASUS unless and until enjoined by this Court.

1 **SECOND CLAIM FOR RELIEF**
 2 **INFRINGEMENT OF U.S PATENT NO. 7,103,765**

3 11. The allegations of paragraphs 1-5 are incorporated herein by reference.

4 12. ASUS is the owner by assignment of all right, title, and interest in and to United
 5 States Patent No. 7,103,765, entitled "Method and system for providing a modulized server on
 6 board" (hereinafter "the '765 patent"), which was duly and legally issued on September 5, 2006.
 7 A true and correct copy of the '765 patent is attached to this Complaint as Exhibit 2.

8 13. IBM has infringed and continues to infringe directly and/or indirectly, literally
 9 and/or under the doctrine of equivalents, one or more claims of the '765 patent under 35 U.S.C.
 10 Section 271, by making, using, offering to sell, or selling within the United States, including this
 11 judicial district, or importing into the United States, server hardware and software products,
 12 including but not limited to IBM server blades such as BladeCenter HS21.

13 14. IBM's unlawful infringement of the '765 patent, ASUS has suffered, and will
 14 continue to suffer, irreparable harm and damages.

PRAYER FOR RELIEF

16 WHEREFORE, ASUS prays that this Court enters judgment and provides relief as follows:

17 1. That IBM has infringed the '346 patent and the '765 patent;

18 2. That IBM, and its officers, agents, servants, employees, and those in active concert
 19 or participation with them directly or indirectly, be enjoined from infringing the '346 patent and
 20 the '765 patent;

21 3. That IBM be ordered to account for and pay to ASUS the damages resulting from
 22 IBM's infringement of the '346 patent and the '765 patent, together with interest and costs, and all
 23 other damages permitted by 35 U.S.C. § 284, including enhanced damages up to three times the
 24 amount of damages found or measured;

25 4. That this action be adjudged an exceptional case and IBM be awarded its attorneys'
 26 fees, expenses and costs in this action pursuant to 35 U.S.C. § 285; and

27 5. That ASUS be awarded such other equitable or legal relief as this Court deems just
 28 and proper under the circumstances.

1 **DEMAND FOR JURY TRIAL**

2 Defendant ASUS hereby demands a jury trial on all claims and issues in this action.

3

4 DATED: May 27, 2008

FISH & RICHARDSON P.C.

5 By:



John P. Schnurer
Cheng (Jack) C. Ko
Ryan P. O'Connor

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7 Attorneys for Plaintiff,
8 ASUSTeK Computer, Inc.

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1 **NOTICE OF PARTY WITH FINANCIAL INTEREST**

2 Pursuant to CivLR 40.2, the undersigned certifies that as of this date, there are no persons,
3 associations of persons, firms, partnerships, corporations (including parent corporations) or other
4 entities, other than the parties themselves, known by ASUS to have a financial interest in the
5 subject matter in controversy or in a party to the proceeding.

6 DATED: May 27, 2008

FISH & RICHARDSON P.C.

7 By:



John P. Schnurer
Cheng (Jack) C. Ko
Ryan P. O'Connor

Attorneys for Plaintiff,
ASUSTeK Computer, Inc.

1 **CERTIFICATE OF SERVICE**
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3 The undersigned hereby certifies that a true and correct copy of the above and foregoing
4 document has been served on May 27, 2008 to all counsel of record who are deemed to have
5 consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any
6 other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

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10 Attorneys for Plaintiff
11 ASUSTEK COMPUTER, INC.
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